

sentative can not recover such payment unless such payment was an involuntary one.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4404.

TRUST COMPANY—TREASURER OF STATE AND SUPERINTENDENT OF BANKS UNAUTHORIZED TO CHANGE NATURE OF DEPOSIT REQUIRED BY SECTION 710-150, G. C.

SYLLABUS:

Neither the Treasurer of State nor the Superintendent of Banks has the legal authority to enter into an agreement concerning the depositing of securities under Section 710-150, General Code, on any other terms and conditions than those set forth in that and succeeding sections.

COLUMBUS, OHIO, June 8, 1932.

HON. I. J. FULTON, *Superintendent of Banks, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your request for opinion, as follows:

"Peoples-Pittsburgh Trust Company is a foreign corporation qualified to transact a trust business in the State of Ohio, and as such, is maintaining on deposit with the Treasurer of State securities in the amount of \$100,000, as provided in Section 710-150 of the General Code of Ohio. I am advised that this corporation has in the past, in order to protect itself against possible loss of said securities by fire, theft or otherwise, carried insurance upon the State Treasurer. Premiums on this type of insurance, according to my information, have been increased substantially and said corporation desires to be relieved of the burden of paying the premiums thereon.

Peoples-Pittsburgh Trust Company, therefore, desires to have the securities which it may deposit with the Treasurer of State in accordance with Section 710-150, registered in the name of 'Peoples-Pittsburgh Trust Company, Pittsburgh, Pennsylvania', and it desires to file with the Superintendent of Banks a declaration in writing providing that in case all or any part of said securities which will be described specifically in the instrument or the proceeds thereof are required to satisfy any lawful claim or demand in any way arising from or growing out of the failure of Peoples-Pittsburgh Trust Company to faithfully discharge the duties undertaken by it under any trust being administered by it in the State of Ohio, that the Superintendent of Banks of the State of Ohio may upon giving said Peoples-Pittsburgh Trust Company _____ days notice of his intention to do so, request the registrar of such securities to transfer upon the books of the company, a sufficient principal amount of said securities to satisfy any such claim or demand.

In order that you may be more specifically advised, a copy of the proposed instrument is enclosed herewith.

I am requesting your opinion relative to the legality of handling these securities in the manner desired."

Section 710-150, General Code, referred to in your inquiry, in so far as at present material to your inquiry, reads:

"No trust company, or corporation, either foreign or domestic, doing a trust business shall accept trusts * * * until such corporation has deposited with the treasurer of state *in cash* the sum of one hundred thousand dollars, except that the full amount of such deposit by such corporation may be in bonds, * * *." (Italics the writer's.)

Your inquiry is directed at the exception clause contained in such section, which permits the deposit of securities in lieu of cash.

The rule of interpretation of such exception clause is contained in the first branch of the syllabus of *State ex rel. Kellar vs. Forney*, 108 O. S., 463:

"Exceptions to the operation of laws, whether statutory or constitutional, should receive strict but reasonable construction."

Section 710-161, General Code, prescribes the purpose of such deposit of money or bonds with the Treasurer of State. Such section reads:

"The capital stock of such trust company, with the liabilities of the stockholders existing thereunder, and the fund deposited with the treasurer of state as provided by law shall be held as security for the faithful discharge of the duties undertaken by such trust company in respect to any trust, and no bond or other security, except as herein-after provided, shall be required from any such trust company for or in respect to any trust, nor when appointed executor, administrator, guardian, trustee, receiver, assignee, or depositary; except that the court or officer making such appointment may, upon proper application, require any trust company which shall have been so appointed to give such security for the faithful performance of its duties as to the court or officer shall seem proper, and upon failure of such trust company to give security as required may remove such trust company and revoke such appointment."

I call your attention specifically, to the provisions of Section 710-150, General Code, concerning the rights of the depositing trust company in and to such securities after deposit with the Treasurer of State, which are contained in the last sentence of such section:

"From time to time said treasurer shall, with the approval of the superintendent of banks, permit withdrawals of such securities or cash, or part thereof, upon deposit with him and approval of the superintendent of banks, of cash or other securities of the kind heretofore named, so as to maintain the value of such deposits as herein provided, and so long as it continues solvent he shall permit it to collect the interest on its securities so deposited." (Italics the writer's.)

From the language above quoted, the legislative intent is clearly shown; that is, only as long as the depositing trust company continues to be solvent, is it permitted to receive the interest accruing on such deposited securities. After insolvency such language imports that the legislative intent was to make such interest a part of the trust fund for the purposes set forth in Section 710-161, General Code.

Construing together, Sections 710-150 and 710-161, General Code, it is apparent that the deposit with the Treasurer of State is for a specific purpose. The word "deposit" is used with various shades of meaning by English speaking people, the exact meaning being gathered from the context. The context of these sections makes it appear that the legislature used the word "deposit" in Section 710-150, General Code, as having the meaning of transferring to the recipient title to the securities in question, to the extent necessary to accomplish the purposes set forth in such sections, which are, upon insolvency, to dispose of the security and subject the proceeds to the payment of any losses suffered by reason of such insolvency or default on the part of the depositing trust company.

The proposed deposit agreement contemplates the deposit of registered bonds in lieu of the one hundred thousand dollars cash deposit mentioned in such Section 710-150. The only purposes of registering bonds are to limit their negotiability, to place restrictions upon the payment of interest accruing thereon and to provide concerning the receipt of notices which may affect the value or method of retirement of such securities.

It is stated in Daniel on Negotiable Instruments, Section 1501-b:

"It would seem from the few decisions that exist on the subject, that registered bonds are not negotiable; and that they are in fact registered so as to make them transferable in such manner as to exclude equities between the original parties only by registry upon the books of the corporation issuing them." Citing *Cronin vs. Patrick Co.*, 4 Hughes, 529; *DeVoss vs. City of Richmond*, 18 Gratt., 338; *Scollans vs. Rollins*, 173 Mass., 273.

It is therefore apparent that the proposed agreement would create certain rights in the deposited securities in favor of the depositor. That is, the statute authorizes the Treasurer of State and the Superintendent of Banks to permit trust companies to collect interest on securities "so long as it is solvent", while the agreement permits the depositing trust company to exercise such right after insolvency and until the Superintendent of Banks shall have received proof of loss, allowed the same and determined what part of such securities he must liquidate for the purpose of paying the losses and has given "_____ days notice of his intention to do so", to the depositing trust company.

The offices of Treasurer of State and Superintendent of Banks are creatures of statute, and as such, they have only such powers and duties as are given them by statute. They may not administer such funds in any other manner than that set forth in the statutes without becoming personally liable for any loss suffered thereby. Sections 710-150 and 710-161, General Code, set forth specifically the rights of the depositing trust company in and to such securities. I do not believe that such rights would be changed either by extension or diminution except by legislative action, since they were fixed by legislative action and I must therefore hold that the Superintendent of Banks has no legal authority to enter into the enclosed agreement concerning the deposit of securities.

Specifically answering your inquiry, I am of the opinion that neither the Treasurer of State nor the Superintendent of Banks has the legal authority to enter into an agreement concerning the depositing of securities under Section 710-150, General Code, on any other terms and conditions than those set forth in that and succeeding sections.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4405.

AUTOMOBILE—SANITARY ENGINEER—COST MAY BE PAID FROM WATER RENTALS AND SEWER MAINTENANCE ASSESSMENTS.

SYLLABUS:

An automobile purchased for use by a sanitary engineer may be paid for from funds derived from water rentals and sewer maintenance or operation assessments which are collected in an established sewer district for the purpose of paying the cost of maintaining and operating a water works and sewer system in such district, provided the use of said automobile is confined to said district. The amount paid from each of said funds should be fairly proportionate to the use which is to be made of such automobile for each of said systems.

COLUMBUS, OHIO, June 8, 1932.

HON. J. FRANK POLLOCK, *Prosecuting Attorney, Painesville, Ohio.*

DEAR SIR:—I am in receipt of your communication which reads as follows:

"The County Commissioners of Lake County are considering purchasing an automobile for the Sanitary Engineer. The purchase price of the automobile to be paid from funds derived from water rents collected under the provisions of Section 6602-17 of the General Code and by the sewer and maintenance assessments, or must it be purchased from the general fund?"

Section 2412-1, General Code, reads in part as follows:

"That, whenever the board of county commissioners, deems it necessary to purchase a motor vehicle or vehicles for the use of the sheriff or sanitary engineer, their deputies or necessary employes they shall adopt a resolution setting forth the necessity for such purchase, together with a statement of the kind and number of vehicles required and the estimated cost of each such vehicle.

Upon the adoption of said resolution the board of county commissioners may purchase said vehicles for the use and purposes of the aforesaid persons or any of them."

In Opinions of the Attorney General for 1928, Vol. I, page 63, it was held that an automobile purchased for a dog warden must be paid for from the